THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.26995 of 1997

% 28.02.2007

Between:

V.Krishnaiah and others

…Petitioners

And

Joint Collector, Mahabubnagar and others

…Respondents

! COUNSEL FOR Petitioners: Sri A. Sudershan Reddy

^ COUNSEL FOR RESPONDENTS: G.P. for Revenue

Sri A.Narsimha Reddy,

for respondents 4 and 5

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? CITATIONS:

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JUDGMENT:

The petitioners are the sons of late Venkatanna of Jinnaram Village, Narva Mandal, Mahaboobnagar District. Venkatanna was the owner of Ac.15.35 gts., of land in Sy.No.96 of that village. On his death, the petitioners herein filed an application dated 08-01-1989 under the provisions of the A.P. Rights in Land and Pattadar Passbook Act, 1971 (for short '*the Act*'), and the Rules made thereunder, before the Mandal Revenue Officer, Narva, the 3rd respondent, for grant of succession. After conducting due enquiry, the 3rd respondent sanctioned succession in favour of the petitioners, through his order dated 20-04-1989.

Respondents 4 and 5 filed an application on 30-06-1989 before the 3rd respondent under Section 5-A of the Act read with Rule 22, for regularization of the sale in their favour, in respect of the very land in Sy.No.96. According to them, their ancestor by name, Vakiti Ramanna, purchased the property through an unregistered sale deed dated 18-05-1959, for a consideration of Rs.1,500/- from Venkanna, and that in the family partition, it has fallen to their share. They prayed for regularization of the sale in their favour.

The 3rd respondent issued proceedings dated 22-05-1995,

regularizing the sale in favour of respondents 4 and 5 and directing necessary amendments of entries in the revenue records. Aggrieved thereby, the petitioners filed an appeal under Section 5-B of the Act, before the Revenue Divisional Officer, the 2nd respondent. The appeal was allowed on 21-12-1996. Thereupon, the respondents 4 and 5 filed a revision before the Joint Collector, the 1st respondent, under Section 9 of the Act. The 1st respondent allowed the revision and had sustained the order passed by the 3rd respondent, regularizing the sale in favour of the respondents 4 and 5. Hence, this writ petition.

The petitioners contend that the proceedings initiated against them, under Section 5-A, are untenable, both on facts and in law. It is stated that the document in question relied upon by the respondents 4 and 5, is fabricated one, and that the 3rd respondent exceeded the scope of enquiry under the relevant provisions.

On facts also, they contend that, when hardly two months before the application under Section 5-B, succession was granted to them, there was absolutely no justification for the 3rd respondent in regularising the alleged sale, in favour of the respondents 4 and 5. They also complained of, the violation of the procedure, particularly the one, contemplated under Rule 13 of the Rules.

On behalf of the respondents 1 to 3, counter affidavit is filed, stating, in detail, the circumstances that led to the regularization of the sale in favour of respondents 4 and 5. It is stated that the petitioners were given ample opportunity to put forward their case, and after conducting inspection on the spot, and verification of the facts from reliable sources, the 3rd respondent had regularized the sale in question. Respondents 4 and 5 have also filed counter affidavit,

stating that respondents 1 and 3 have passed orders in their favour, strictly in accordance with law. They narrated the nature of rights, said to have been exercised by them, in respect of the land in question. In all respects, they reiterated the contention advanced before the respondents 1 and 3.

Sri A.Sudershan Reddy, learned counsel for the petitioners submits that the regularization of sales, contemplated under Section 5-A of the Act, is limited to the cases, where there is no dispute, as to the execution of unregistered sale deed. He contends that if the execution is disputed, the concerned party has to work out the remedies in a Court of law. Learned counsel points out that the very fact that enactments, such as the Limitation Act are not saved; discloses that a remedy, which is otherwise is barred, for a purchaser under an agreement of sale, or a sale deed, cannot be granted under the Act and the Rules, in the event of any dispute. He submits that the 2nd respondent had recorded a clear finding to the effect that the 3rd respondent did not maintain the record, or file properly, and that no opportunity was granted to the petitioners to put forward their case. It is urged that the burden was placed upon the petitioners to disprove the case, whereas it is for the respondents 4 and 5, to establish their case, particularly when they are not the transferees.

Learned Government Pleader for Revenue, for respondents 1 to 3, on the other hand, submits that the 3rd respondent had followed the procedure prescribed under the Act and the Rules, and on being satisfied, that the respondents 4 and 5 are entitled for the relief of regularization of sale, had passed appropriate orders. He contends that the 1st respondent had perused the entire record and assigned cogent reasons in a detailed order, passed in the revision. It is also his

case that the remedy provided for, under Section 5-A of the Act is comprehensive in nature, and not limited to any particular category of cases, as pleaded by the petitioners.

Sri A.Narsimha Reddy, learned counsel for the respondents 4 and 5 had argued on the same lines, as did the Government Pleader. In addition, he contends that his clients have submitted an application, strictly in accordance with the Act and Rules, and have adduced relevant evidence, in support of their case.

He points out that their possession is recorded for the past several decades, and that the petitioner cannot be said to have suffered any detriment, on account of the regularization.

Sale of an item of immovable property is governed by the provisions of the Transfer of Property Act and the Registration Act. The former enlists the ingredients, and incidence, of sale, apart from requiring that any sale of immovable property, exceeding the value of Rs.100/-, must be through a registered document. The latter, *inter alia* mandates that unless registered, the sale deed cannot be received in evidence. Section 53-A of the Transfer of Property Act protects the rights of the purchasers of an immovable property, where all ingredients of sale exist, except the registration of a document.

It is not uncommon that immovable properties change hands through unregistered documents. Notwithstanding the serious legal infirmity, as to the transfer of title, the parties continued to enjoy substantial rights, of transferor and transferee. Validation of sales of this nature, through agencies, other than civil Courts, was taken up as part of agrarian reforms in the State of Andhra Pradesh. Section 50-B was added to A.P. Telangana Area Tenancy and Agricultural Land Act, 1950 (for short, 'the Tenancy Act'), through Act 6 of 1964.

According to this provision, any alienation of land, which took place after 10-06-1950, but before the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1964, came into force, and where possession of such land was delivered to the transferee, the transaction can be validated by the Tahsildar, on an application made by the transferee, subject to payment of the stamp duty, payable on the transaction. Almost on the same lines, Section 5-A was added to the A.P. Record of Rights in Land and Pattadar Passbook Act, 1971, through Act, 1 of 1989. The provision reads as under:

> **Section 5-A**. ***Regularisation of certain alienations or other transfers of lands***:-
>
> (1) Notwithstanding anything contained in this Act, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law for the time being in force, [where a person is an occupant] by virtue of an alienation or transfer made or affected otherwise than by registered document, the alienee or the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.
>
> (2) On receipt of such application, the Mandal Revenue Officer shall after making such enquiry as may be prescribed require the alienee or the transferee to deposit in the office of the Mandal Revenue Officer an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908 as fixed by the registering officer on a reference made to him by the Mandal Revenue Officer on the basis of the value of the property arrived at in such manner as may be prescribed;
>
> Provided that the Mandal Revenue Officer shall not require the alienee or the transferee to deposit the amount under this sub-section unless he is satisfied that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural

Holdings) Act, 1973, the Urban Land (Ceiling and Regulation Act 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(3) Nothing contained in sub-section (1) and sub-section (2) shall be deemed to validate any alienation where such alienation is in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(4) The Mandal Revenue Officer on deposit of an amount specified in sub-section (2), shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of certificate and such certificate shall, notwithstanding anything in the Registration Act, 1908 be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him.

(5) The recording authority, shall on the production of the certificate issued under sub-section (2) make any entry in the pass book to the effect that the person whose name has been recorded as an occupant is the owner of the property."

This provision is broadly comparable to Section 50-B of the Tenancy Act. The process is termed as a validation under the Tenancy Act, whereas under the present Act, it is called as regularization. It is important to note that the Transfer of Property Act and Registration Act are saved under Section 5-A of the Act. Corresponding procedure, to be followed in this regard;
is prescribed under Rule 22 of the Rules.

The father of the petitioners was admittedly the owner of the property in Sy.No.96. On an application made by the petitioners, after

the death of their father, the 3rd respondent granted succession to them, on 20-04-1989. The respondents 4 and 5 filed an application within two months thereafter under Section 5-A of the Act. The land was said to have been purchased by one Vakiti Ramanna S/o.Kurmaiah, from the father of the petitioners, in the year 1950. Ramanna had three brothers namely Pedala Yellappa, Laxmanna and China Yellappa. Respondent No.4 is the daughter-in-law of Pedda Yellappa, and Respondent No.5 is the son of Laxmanna. The properties said to have been fallen to the respondents 4 and 5, in the family partition. Out of the four brothers Chinna Yellappa was alive by the time the application was filed. Though their application was submitted in the year 1989, the actual enquiry appears to have been taken up in the year 1994, and an order was passed on 22-05-1995, regularizing the sale in their favour.

A perusal of the order passed by the 3rd respondent, on 22-05-1995 discloses that the petitioners have opposed the application, and engaged an advocate. The fact that an objection petition was filed by the 1st petitioner, was taken note of. Neither the nature of objections, nor the type of evidence adduced by the respective parties is mentioned. The adjudicatory part of the order refers only to the fact that the 3rd respondent recorded the statement of the neighbouring land owner, and took note of the fact that the scribe of the document died. By observing that the father-in-law of the 4th respondent had obtained a loan of Rs.6,000/-obviously upon the land, the 3rd respondent recorded a finding to the effect that the respondents 4 and 5 have proved the sale of the land in their favour.

In the appeal preferred to him, the 2nd respondent called for the record and made an observation to the effect that the

3rd respondent did not maintain the file properly and did not give opportunity to the petitioners herein. He had also pointed out that the permission of the superior authority, as required under Rule 13 (2) of the Rules, was not obtained, before regularizing the sale.

In the revision preferred by the respondents 4 and 5, the 1st respondent was mostly impressed by the entries, relating to possession of the property. It was observed that the prescribed procedure was followed and the questions of the 3rd respondent do not suffer from any illegality.

The regularization of an alienation under Section 5-A of the Act, is akin to the relief of specific performance of an agreement of sale, under the provisions of the Specific Relief Act. From the point of view of procedure, various hurdles, which, a plaintiff in a suit for specific performance has to face, have been removed under Section 5-A. The provisions of the Transfer of Property Act and the Registration Act are saved. However, on a close examination of the relevant provisions, it becomes evident that the relief under Section 5-A can be granted only when there is no dispute as to the execution of the document concerned. The emphasis is mostly on, verification of possession over the property, existence of a document, collection of stamp duty, and registration charges and then issuance of a certificate of regularization. This, in turn, would lead to the amendment of corresponding entries in the revenue records. The scope of inquiry is very limited. Sub-section (1) thereof presupposes the existence of an alienation or transfer made or effected otherwise than through a registered document. The focus of the enquiry is mostly to examine the date, on which the alienation has taken place and whether the alienation, or transfer contravenes the provisions of the enactments mentioned in proviso to sub-section (2). After satisfaction on these two

aspects is ensured, the recording authority would require the applicant to deposit of the amount, representing the stamp duty and registration fees.

Any doubt in this regard, stands clarified, if one reads Rule 22. Sub-rule (1) thereof relates to the publication of notification, calling for applications from the intending persons to avail the benefit under Section 5-A. Sub-Rule (2) provides for submission of the application in Form No.10. The actual scope of enquiry is to be discerned from sub-rules (3) and (4), which read as under:

> **Sec. 22 (3)**. On receipt of the application under sub-section (2) of Section 5-A, of the Act, the Mandal Revenue Officer shall issue notice to the alienor or transferor in Form No.XI specifying therein the date on which and the time at which he proposes to enquire into the application. He shall also cause to issue a notice in form No.XII to all other persons believed to be interested in the land specifying therein, date, time and place at which he proposes to enquire into the application. Only unregistered documents shall be considered under Section 5-A of the Act.
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> (4) On the day so appointed or any other day to which enquiry may be adjourned by him, the Mandal Revenue Officer shall after hearing the parties and on examining their documents and witnesses, if any, and after taking such further evidence as he may consider necessary to satisfy himself that the alienation or transfer is not in contravention of any of the provisions of the Acts referred to in Rule 9(i)(a)(iv) complete the enquiry".

Sub-rules (5) and (6) provide for the steps to be taken as a consequence of the certificate of regularization.

From a reading of Sub-rules (3) and (4) it becomes clear that on a consideration of the evidence before him, the recording authority must be satisfied that the alienation or transfer is not in contravention of any of the provisions of the Acts referred to in Rule 9(i)(a)(iv), which are same as those mentioned in proviso to sub-section (2) of Section

5-A.

The extent of power conferred on the recording authority is very limited. Under Section 10 of the Act, it is restricted to the one, for summoning and enforcing the attendance of a person, requiring the discovery and production of documents, and any other matter which may be prescribed; obviously, under the Rules. Rule 28 of the Rules confers the powers of a civil Court on the recording authority, only for the purpose of entering upon and inspecting any land or taking measurements thereof. Barring this, there do not exist any attributes of a civil Court, to the recording officer.

There are other important indicators to point out that the scope of enquiry under Section 5-A and the relevant rules is limited and restricted. Take for instance, a case where the alleged transferor or alienor flatly denies the execution of the document, in relation to the transaction, which is sought to be regularized, or where he takes the plea of limitation. Once the execution of the document is disputed, its genuinity can be decided only after a trial and by applying the principles enunciated in the Evidence Act. If a plea of limitation is raised, necessary issue has to be framed, and a finding thereon has to be recorded. With the limited nature of powers conferred upon a recording authority, such a stupendous task becomes almost impossible, for the recording authority.

The experience shows that, wherever the Legislature had intended to confer the power of a civil Court upon an administrative or *quasi-judicial* authority, or a different forum, either an independent, procedure is prescribed or the one, that applies to civil Courts is extended to them. To the extent the power of adjudication is conferred on the alternative fora, the jurisdiction of the civil Courts is taken away through specific provisions of law.

This becomes necessary because the jurisdiction of a civil Court is comprehensive. Further, the exclusion of jurisdiction of the civil Courts would depend upon the efficacy of the remedy that can be granted by the alternative forum. If the matter is examined on the touchstone of these principles, it emerges that hardly any powers of a court to adjudicate the disputes are conferred upon the recording authority. He can not record evidence. He is not trained to adjudicate the disputes involving complicated questions, such as capacity to contract, succession, testamentary, or otherwise, limitation etc. Therefore, the irresistible conclusion is that the jurisdiction of the recording authority under the Act in relation to the regularization under Section 5-A is confined to cases, where, no dispute exists as to the execution of the document. If there is any dispute as to the execution of the document or any other contentions are raised, the dispute has, invariably to be adjudicated by a civil Court.

On merits also, the order under challenge cannot be sustained. None of the contentions advanced on behalf of the petitioners were examined by respondents 3 and 1. The matter was proceeded as though the burden rested upon the petitioners, to prove that the alleged document was not executed by their father. The only witness examined by the 1st respondent, was, not the one, produced by the parties. Even that witness did not have any knowledge about the execution of the document. His deposition was to the effect that the respondents 4 and 5 are in possession and enjoyment of the property. The 3rd respondent did not take approval of the superior officer, as required under Rule 13(2), before taking the further steps. Respondents 4 and 5 are not the alienees or transferees. They are claiming through a remote source. Nothing was placed before the 3rd

respondent, to substantiate their claim, that the property was allotted to them in the family partition. None connected with the partition was examined.

For the foregoing reasons, the writ petition is allowed, and the orders passed by the 3rd respondent, on 22-05-1995, and affirmed by the 1st respondent, through proceedings dated 20-09-1997; are set aside. It is left open to the respondents 4 and 5, to work out their remedies in a Civil Court. It is, however, made clear that this judgment shall not be treated as having any bearing on the possessory rights of the parties.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt. 28–02-2007

Note:
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